

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROGER ANDREW HOORN,

Defendant-Appellant.

UNPUBLISHED

September 18, 1998

No. 201579

Ottawa Circuit Court

LC No. 96-019995 FH

Before: Whitbeck, P.J., and McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

A jury convicted defendant of breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305. The trial court sentenced defendant to one year's incarceration in the county jail. Defendant appeals as of right. We affirm.

Because defendant did not move for a new trial or an evidentiary hearing on the basis of ineffective assistance of counsel, we limit our review of defendant's claim of ineffective assistance of counsel to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). We find that defendant has failed to demonstrate that his trial counsel erred when he failed to seek the admission of a handwritten report prepared by a sheriff's deputy or when trial counsel failed to question the deputy about the report. The record fails to disclose that the report was prepared before defendant's interview with a sheriff's detective or that the sheriff's deputy who prepared the report would have testified that the report was prepared before the interview and made available to defendant, either intentionally or unintentionally. Defendant has failed to overcome the "presumption that trial counsel's conduct falls within the wide range of reasonable professional assistance." *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997). Defendant did not raise the issue at trial, and there is no basis to reconstruct his argument for him

* Circuit judge, sitting on the Court of Appeals by assignment.

on appeal based on his own mere speculation that the jury would have decided differently. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997).

Affirmed.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks